

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

RYAN L.,

Claimant,

vs.

**EASTERN LOS ANGELES REGIONAL
CENTER,**

Service Agency.

**OAH Nos. L 2006120076
& L 2006120079**

DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on April 20, 2007, in Alhambra, California. Ryan L. (Claimant) was represented by Matthew Pope with the Office of Clients' Rights Advocacy, Claimant's authorized representative.¹ Claimant's mother, Maureen F. was also present. Eastern Los Angeles Regional Center (ELARC or Service Agency) was represented by Don Daniels, Supervisor of Community Residential Services.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on April 20, 2007.

ISSUE

1. May the Service Agency terminate funding for Claimant's music therapy?
2. May the Service Agency reduce and eventually terminate the number of hours of nursing respite per month, with reduction of 25% of the hours each quarter until complete termination?

¹ Claimant's and his mother's last initials are used herein, in lieu of their surnames, in order to protect their privacy.

FACTUAL FINDINGS

1. Claimant is a 14-year-old male who is eligible for regional center services based on a diagnosis of cerebral palsy. Claimant also suffers from seizure disorder, brachial pulmonary dysplasia, gastroesophageal reflux disease, visual impairment and optic atrophy of the left eye. He is required to use a feeding tube (g-tube) and currently uses a wheelchair. He has deficient bone density and has suffered several bone fractures within the past few years.

2(a). On October 27, 2006, ELARC sent Claimant a Notice of Proposed Action (NOPA), informing him that it intended to discontinue his current funding for music therapy services. ELARC indicated the reason for the proposed action as follows:

Music Therapy is considered a related service under Part B of IDEA that would be applicable to (1) music therapy as a related service. Federal IDEA Legislation. As with other related services, the IEP team may determine that music therapy is an appropriate related service for a child and makes the recommendation for a music therapy assessment.

Secondly, as you stated your reason for music therapy, it serves to increase fine and gross motor skills, improve communication skills (specifically articulation), increase auditory discrimination and allows for increased recreational/socialization functioning. A review of Ryan's records including the IEP, Music Therapy Progress Reports and ELARC IPP revealed that via his school-based services, he continues to be assisted in establishing the aforementioned skills. These services also provide for socialization and recreational opportunities.

Therefore, it is considered that the outcomes you hoped to achieve through music therapy are redundant and a supplementation to services already provided through his educational programs (Speech & Language Therapy, Augmentative Communication, Physical Therapy and regional center funded service including individualized private swim instruction and fitness trainer. . . .^{2]}

² The NOPA also stated that ELARC's clinical team determined that music therapy services were "experimental" and that there was "no conclusive research based evidence that developmental disabilities were improved by this type of treatment." However, this argument was not raised by ELARC at the April 20, 2007 fair hearing. Moreover, even if ELARC intended to hold this position, it would not be persuasive given: (1) ELARC's funding of Claimant's music therapy since 1999 (Factual Finding 5); (2) ELARC's acknowledgment that the music therapy helped Claimant to increase motor skills, communication skills, auditory discrimination and socialization (Factual Findings 2(a) and 10); and (3) the literature and testimony presented by Claimant at the fair hearing, which established that music therapy helps developmentally disabled persons achieve treatment goals (Factual Finding 14).

2(b). ELARC's purported authority for its proposed action was Welfare and Institutions Code sections 4646.5, subdivision (a), 4648, subdivision (a)(8), and the Individuals with Disabilities in Education Act (IDEA) Section 300.24. (Exhibit G.)

3(a). On November 8, 2006, ELARC sent Claimant a NOPA, informing him that it intended to reduce funding for his Licensed Vocational Nurse (LVN) Respite by 20 hour increments per quarter, until complete termination of the services. ELARC indicated the reason for its proposed action as follows:

Based on ELARC's clinical team review of all relevant records, nursing respite hours funded by ELARC need to be decreased and terminated. Ryan receives in home nursing services through EPSDT in the amount of 40 hours per week and In Home Supportive Services at the maxim [sic] level of [283] hours per month. ELARC Purchase of Service Guidelines NRS 2 under IV: Alternative Funding Resources include generic resources like Medi-Cal/EPSDT/Public Health Care etc. ELARC must consider all generic resources when assessing the consumer needs.

3(b). ELARC's stated authority for its proposed action was Welfare and Institutions Code sections 4646.5, subdivision (a), 4648, subdivision (a)(8), and 4659, subdivision (a). (Exhibit F.)

4. On November 17, 2006, Maureen F., on Claimant's behalf, submitted two fair hearing requests, appealing ELARC's October 27, 2006 and November 8, 2006 NOPA's and seeking to continue the services at the established levels. The two issues designated by the fair hearing requests were consolidated for hearing.

Issue 1: Music Therapy

5. Claimant has received music therapy services, funded by ELARC, since 1999.

6. Based on reports (dated August 2005, March 2006 and September 2006) by Claimant's music therapist, Amy Tibert (Tibert), Claimant has continued to make progress toward stated goals, which include: increasing fine and gross motor skills, increasing listening skills, improving communication skills, especially speech articulation, and increasing auditory discrimination. In her September 2006 report, Tibert noted that, in addition to meeting stated therapy goals, Claimant has benefited from music therapy in other ways, as follows:

Ryan thrives in the music therapy sessions, much more than in other non-musical traditional therapy sessions. Due to the limitations of Ryan's disability, he is unable to do many of the things that other children his age are able to do. Music therapy allows Ryan to be successful at age appropriate activities, allowing him to acquire the skills necessary to interact with his

peers outside of music therapy. His personality and character are unmistakable through the music therapy sessions as he explores the interventions with creativity and humor.

7. In all of her reports, including her last report, dated September 2006, Tibert recommended that Claimant continue to receive music therapy services.

8. Claimant's last Individualized Program Plan (IPP) meeting took place on August 17, 2006. In the August 17, 2006 IPP, two of Claimant's mother's goals were "to see Ryan in the community, and for people to accept him as a friend," and for "Ryan to continue growing up with his family."

9. At the time of his last IPP, Claimant was receiving ELARC funding for one hour per week of music therapy.

10. As stated in the IPP, the targeted outcome of his music therapy was to develop and improve Claimant's "musical abilities, fine and gross motor skills, increase [his] listening skills, [and] improve [his] speech articulation[,] conversation skills and . . . auditory discrimination." The August 17, 2006 IPP noted, "Ryan continues to benefit from therapy, evident by his progress toward music therapy goals."

11. At the time of his last IPP, Claimant was also receiving services funded by his school district and other sources. The services included Orientation & Mobility, Physical Therapy, Adaptive Physical Education (APE), Speech and Language Therapy and Augmentative Communication. As noted in Claimant's Medicaid Waiver Service Plan (MWSP), formulated at the time of IPP, that "Ryan's behavior is an issue which has affected his progress, [sic] he is resistive to therapy since his hip surgeries, but he is slowly responding."

12. At the August 17, 2006 IPP meeting, the Service Agency informed Claimant's mother that music therapy would be discontinued. Claimant's music therapist was not invited to provide input and did not participate in the Service Agency's decision to discontinue Claimant's music therapy.

13. During the August 17 IPP meeting, the Service Agency representative advised Claimant's mother to request funding for music therapy through Claimant's school district. Claimant's mother subsequently made the request, which was denied by Claimant's school district.

14(a). At the administrative hearing, Tibert testified credibly on Claimant's behalf. The Service Agency provided no testimony or evidence to contradict Tibert's testimony, which is set forth below in subparagraphs (b) through (m) and incorporated as factual findings herein.

14(b). Tibert is a Board-certified music therapist. In order to receive this national certification, she was required to obtain a four-year degree in music therapy, complete a six-

month internship and pass an examination. The certification is a five-year certification, requiring 105 hours of music therapy credits for renewal. Tibert works as a vendor through several regional centers, including ELARC, and also has private contracts with parents. She has done some work in the school setting, funded by parents rather than the school districts.

14(c). Music therapy is research-based. In music therapy, music is the tool used to address non-music goals such as motor functioning, speech, attention and behavior.

14(d). Music therapy can help assuage physical pain. For example, Tibert once used music to distract Claimant from the pain of a previous day's surgery. At the beginning of the session, he was slumped over, but by the end of the session, he was sitting up and smiling and had worked through the pain.

14(e). Music therapy also facilitates relaxation. Although Tibert does not specifically address that goal with Claimant, she notes that his legs slowly become more relaxed toward end of each session, allowing her to stretch them.

14(f). Music therapy also helps Claimant to foster a sense of security. Music is concrete, and he can take it with him anywhere he goes. Since he does not have many methods for interacting with others, music provides a method of interaction and increases his confidence in interacting with others.

14(g). Music therapy enforces on-task behavior and participation. Claimant is not allowed to say when the sessions start or stop. It is a mark of growth when client will engage in a non-preferred task instead of a preferred task. Music therapy has created this ability in Claimant.

14(h). Despite his many limitations, Claimant's personality is revealed in the music setting. He makes a lot of jokes and has demonstrated a sense of self worth. Music therapy is not just a recreational activity for him. He will be able to take his base of skills from music therapy into life and use them later.

14(i). Claimant has made progress since Tibert first met him. Music therapy has increased skills in all of Claimant's goal areas: fine and gross motor skills, listening skills, communication skills, especially speech articulation, and auditory discrimination. For example, music therapy requires Claimant to perform correct movements using musical implements, thus strengthening his motor skills. Additionally, Claimant has been very successful at improving his listening skills, demonstrated by his ability to listen to, memorize and repeat melodies and by his ability to follow directions.

14(j). Other than music, Tibert is unaware of anything else that motivates Claimant to exercise. The music is so motivating for him that, no matter what the task, he is willing to complete it. In a typical physical therapy setting, where Claimant knows he is working on physical skills, he may be less compliant. However, with music therapy, he apparently does not realize that he is actually working on difficult tasks. Claimant is more at risk of being

unmotivated because he has so many limitations. If Claimant is denied music therapy, this may eliminate his motivation for learning and maintaining the skills he has achieved.

14(k). It is important for Claimant to receive music therapy outside his school setting in order to address his non-educational related goals, such as quality of life, self esteem, and socializing skills. While it could not hurt for Claimant to acquire music therapy through the school district, music therapy in that setting would address a different set of goals which would focus on academic skills. If Claimant did receive music therapy through his school district, it would still be appropriate for him to continue receiving music therapy in his home. Additionally, assuming that Claimant does not need music therapy to “access” his education, this does not mean that he does not need music therapy in the community setting.

14(l). If one of Tibert’s clients was no longer making progress toward goals or was not meeting objectives, she would recommend termination of music therapy for that client. She has made such a recommendation for other clients, and if she found that to be the case with Claimant, she would recommend termination of music therapy. However, in Claimant’s case, music therapy should be continued because Claimant has been making progress during the years she has worked with him, and he is continuing to make progress.

14(m). During the years she has been Claimant’s music therapist, Tibert has received no comment from ELARC regarding Claimant’s therapy goals or his progress. Instead, ELARC has continued to reauthorize Claimant’s music therapy based on Tibert’s reports. If ELARC believed it necessary, Tibert would be willing to reevaluate the goals being addressed in Claimant’s music therapy since there are many skill areas that music therapy could address for Claimant.

Issue 2: Nursing Respite

15(a). The MWSP, formulated at the August 17, 2006 IPP meeting, noted:

[Claimant] is currently receiving LVN Respite at 40-hours per week through Angel Care Home Health Service, funded by EPSDT.^[3] Additional in-home respite is funded by ELARC 16-hours / week to assist [Claimant’s mother], on Saturday and Sunday. [Claimant] receives . . . [283 hours per month of] IHSS.”^[4]

15(b). The MWSP also noted that that Claimant’s mother suffered from a history of back problems and was unable to lift anything over 15 pounds, and that Claimant’s mother “would like Ryan to continue living at home.”

³ The Early Periodic Screening, Diagnosis and Treatment Program is administered by the United States Department of Health and Human Resources.

⁴ In Home Supportive Services is funded by the Department of Social Services.

16. At that IPP meeting, ELARC's representative stated that the LVN nursing respite provided by ELARC was a duplication of services and informed Claimant's mother that the LVN nursing respite hours would be reduced in increments of 20 hours per quarter (to 60 hours per week from September 1, 2006, through November 30, 2006; to 40 hours per week from December 1, 2006, through February 28, 2006; and to 20 hours per week from March 1, 2007, through May 31, 2007), ultimately resulting in discontinuation of the service.

17. The MSWP noted:

[Claimant's mother] is not in agreement with the regional center assessment and recommendation to reduce of [sic] LVN Nursing Respite [sic] she does not feel this service is a duplication of EPSDT Nursing and IHSS hours. ELARC Nurse Consultant will review the case and Angel Care Nursing Agency will provide the Nursing Assessment in order to make a final decision.

18(a). ELARC's Nurse Coordinator conducted a home visit at Claimant's residence on November 1, 2006, and issued a report dated November 5, 2006. According to the report, the Nurse Coordinator observed a change of Claimant's g-tube dressing performed by the LVN. The report further noted:

Both upper and lower extremities were noticeably [sic] constricted and passive range of motion exercises were implemented. Seizure occurrence [sic] are daily consisting mainly of petit mal as reported by mother. Frequency of about 3-4 times [per day] with duration of 5-10 minutes. LVN reports that inactivity raises the chance of seizure attacks. He ambulates via wheelchair and is able to do certain activities such as bike riding with close supervision.

Consumer has been receiving 40 hours per week of LVN respite funded by EPSDT and supplemented by 80 hours per month with same level care from ELARC. IHSS services in the amount of [283] hours per month is [sic] also being provided to which the mother is the vendored provider. He receives [physical therapy] and speech therapy twice a week from the school district.

18(b). Based on this home visit, the Nurse Coordinator recommended the following:

1. Consumer's medical condition is stable at this time. He lives an active and interactive lifestyle with parent and support staff. 40 hours/week of LVN respite through EPSDT service are sufficient for Ryan care.
2. Recommend to gradually decrease LVN hours as provided by ELARC in the duration of 6-12 months as deemed appropriate by unit supervisor.
3. Please have parent provide medical documentation of her chronic back condition for the chart.

18(c). Although the Nurse Coordinator determined that Claimant's mother's back condition warranted documentation, the Nurse Coordinator did not indicate how this condition affected her recommendation or whether it was even considered in making her recommendation for decreasing and terminating nursing respite funded by ELARC.

18(d). The Nurse Coordinator did not explain how she arrived at the recommendation that 40 hours per week of LVN respite through EPSDT would be sufficient for Claimant's care.

19. ELARC's decision to reduce and terminate funding for nursing respite was not based on the Nursing Coordinator's home visit and report, which occurred after ELARC had informed Claimant's mother of its plan at the August 17, 2006 IPP meeting. Additionally, the Nurse Coordinator's November 11, 2006 report was not issued until after the November 8, 2006 NOPA formally gave notice of ELARC's plan to reduce and terminate nursing respite hours. Consequently, it appears that the Nursing Coordinator's home visit and report were intended only to bolster ELARC's already-final decision, and not to provide ELARC with an independent assessment upon which it could rely in making a final determination. Given the foregoing, and the fact that the Nurse Coordinator's report provided no explanation for her recommendations, little weight is given the November 11, 2006 Nurse Coordinator report.

20. Although the MSWP indicated that "Angel Care Nursing Agency will provide the Nursing Assessment in order to make a final decision [regarding reduction and termination of ELARC-funded nursing respite]," no such Nursing Assessment was submitted by the Service Agency at the fair hearing.

21. Claimant typically receives EPSDT nursing services eight hours per day, Monday through Friday. He typically receives IHSS services Monday through Friday from 9:30 p.m. through 7:30 a.m. The ELARC-funded LVN nursing respite is provided on Saturdays and Sundays.

22(a). At the fair hearing, Claimant's mother testified credibly on his behalf. The Service Agency provided no testimony or evidence to contradict her testimony, which is set forth below and incorporated as factual findings herein.

22(b). Maureen F. is a single mother, solely responsible for Claimant's home care, except for the assistance provided through various nursing and respite services.

22(c). Claimant has received funding from ELARC for LVN nursing respite (16 hours per week) for more than seven years. Claimant has also received EPSDT nursing services (40 hours per month) for more than seven years. IHSS (283 hours per month) is different from the EPSDT nursing services and nursing respite and does not include nursing or medical services. IHSS provides Claimant with protective supervision. Since Claimant's mother is the vendor, she sometimes hires friends to help her out with Claimant's care. Claimant can and sometimes does receive IHSS services and nursing services at the same time.

22(d). During the LVN respite hours on the weekend, Claimant's mother can sometimes get away. However, she sometimes takes her respite in the home.

22(e). Claimant's mother has been diagnosed with lumbar strain and recently received a recommendation from her treating chiropractor to limit heavy lifting to 10 pounds.

22(f). Claimant currently weighs about 92 pounds and is gaining weight. His care involves lifting and moving him several times a day. In the mornings and in the evenings, he must be lifted to be dressed. He sometimes drools on his clothing and must be lifted to change his clothing. During a two hour period, he must be lifted at least once to change his diaper and moved once to change his position in order to provide muscle movement. Also, Claimant must be moved daily to perform his range of movement exercises. At night, he is lifted and placed on a toilet for bowel movement. Additionally, he must be lifted and moved at night to put in place the long braces he is required to wear on his legs to prevent his tendons from shrinking. Claimant is learning to walk again after fracturing his leg in a fall, so he must be lifted to use his walker. Since he does not have vision, he must be assisted by one person on either side of his walker (usually an IHSS worker and the nurse), to ensure that he does not tip the walker over to either side. He must also be carried by two people to be placed on his tricycle. On Saturday and Sunday, he is given a bath, which requires the nursing provider to lift him in and out of the tub.

22(g). In order to protect her back and Claimant's safety, and to keep him living in the home, Claimant's mother requires the nursing and in-home services to assist her. If Claimant's LVN nursing services on Saturday and Sunday were terminated, he would have to stay in the house and his mother would have to stay in his bedroom with him the entire time. She cannot leave him in bed alone for more than five minutes because he could fall or crawl out and, since he has no vision, he could get injured. If the 16 hours of respite were to be terminated, Claimant's mother would think about placing him in a residential facility. She cannot care for him alone, and believes that she could become disabled from trying to do so, rendering her completely unable to care for her son.

LEGAL CONCLUSIONS

Issue 1: Music Therapy

1. Claimant's appeal of the Service Agency's termination of funding for music therapy is sustained. (Factual Findings 1, 2, and 4 through 14; Legal Conclusions 2, 3 and 4.)

2. Where a change in services is sought, the party seeking the change has the burden of proving that a change in services is necessary. (See, Evid. Code §§ 115 and 500.)

3(a). In attempting to discontinue music therapy, ELARC bears the burden of proving by a preponderance of the evidence that the service was not effective in meeting the goals stated in a consumer's individual program plan (IPP).

3(b). Welfare and Institutions Code section 4512, subdivision (b) provides, in part:

[T]he determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. . . . (Emphasis added.)

3(c). Welfare and Institutions Code section 4646 provides, in part:

(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources. (Emphasis added.)

3(d). Welfare and Institutions Code section 4646.5 provides, in part:

(a) The planning process for the individual program plan described in Section 4646 shall include all of the following:

[¶] . . . [¶]

(2) A statement of goals, based on the needs, preferences, and life choices of the individual with developmental disabilities, and a statement of specific, time-limited objectives for implementing the person's goals and addressing his or her needs. These objectives shall be stated in terms that allow measurement of progress or monitoring of service delivery. These goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life in the areas of community participation, housing, work, school, and leisure, increase control over his or her life, acquire increasingly positive roles in community life, and develop competencies to help accomplish these goals .

[¶] . . . [¶]

(4) A schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the individual program plan goals and objectives, and identification of the provider or providers of service responsible for attaining each objective, including, but not limited to, vendors, contracted providers, generic service agencies, and natural supports. The plan shall specify the approximate scheduled start date for services and supports and shall contain timelines for actions necessary to begin services and supports, including generic services. (Emphasis added.)

3(e). Welfare and Institutions Code section 4648, subdivision (a)(1), provides:

In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities including, but not limited to, all of the following:

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.

[¶] . . . [¶]

(7) No service or support . . . shall be continued unless the consumer or, where appropriate, his or her parents . . . is satisfied and the regional center and the consumer or, when appropriate, the person's parents . . . agree that planned services and supports have been provided, and reasonable progress toward objectives have been made." (Emphasis added.)

3(f). Pursuant to the Lanterman Act, an IPP must include a statement of the consumer's goals and objectives, based on the consumer's needs and preferences. Services provided a consumer must be effective in meeting the consumer's IPP goals, and there must be reasonable progress toward objectives.

3(g). ELARC did not prove by a preponderance of the evidence that Claimant's music therapy was not effective in meeting the goals stated in Claimant's IPP. To the contrary, the evidence overwhelmingly established that Claimant is meeting the music therapy goals stated in his IPP. This is demonstrated by statements in Tibert's testimony and reports, as well as in the August 17, 2006 IPP itself. Furthermore, ELARC admits in its NOPA that Claimant's music therapy resulted in an "increase [in] fine and gross motor skills, increase [in] listening skills, improved communication skills (specifically articulation) [and an] increase [in] auditory discrimination and allows for increased recreational/socialization functioning."

4. ELARC argued that music therapy is more appropriately funded through Claimant's school district. This argument is not persuasive. Claimant's music therapy has been addressing goals in his IPP. The evidence did not establish that his music therapy was addressing only the educational goals specifically stated in his Individualized Education Program (IEP). Even if his music therapy enhanced skills which helped to meet educational goals stated in his IEP, this does not preclude the Service Agency's funding of music therapy to address the non-educational related goals stated in his IPP. A client can be provided the same category of service by the regional center and by the school district to meet different goals, educational and community-based. The Lanterman Act does anticipate that, despite a consumer's entitlement to services and supports, "[r]egional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services." (Welf. & Inst. Code, § 4648, subdivision (a)(8).) However, the evidence presented at this fair hearing did not establish that any other agency had the legal responsibility to provide Claimant's music therapy.

Issue 2: Reduction of Nursing Respite Hours

5. Claimant's appeal of the Service Agency's reduction of the number of hours funded for nursing respite is sustained. (Factual Findings 1, 3, 15 through 22; Legal Conclusions 2, 6, 7 and 8.)

6. In attempting to reduce the number of service hours funded for nursing respite, ELARC bears the burden of proving by a preponderance of the evidence that that the reduction of hours is necessary.

7. ELARC did not prove by a preponderance of the evidence that a reduction in the number of nursing respite hours was warranted. The proposed reduction formula had no basis in need and no evidence established any basis for this particular reduction or termination.

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ORDER

WHEREFORE, THE FOLLOWING ORDERS are hereby made:

1. Eastern Los Angeles Regional Center shall continue to fund music therapy for Claimant at one hour per week.
2. Eastern Los Angeles Regional Center shall continue to fund nursing respite for Claimant at 16 hours per week.

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.

DATED: May 1, 2007

JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings